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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ROSS,

Defendant and Appellant.

B205895

(Los Angeles County
Super. Ct. No. BA316458)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rand Rubin, Judge. Affirmed.

Mark Yanis, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon, Supervising Deputy Attorney General, Sharlene A. Honnaka, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant defendant David Ross (defendant) of one count of selling cocaine base. (Health & Saf. Code, § 11352, subd. (a).) On appeal, defendant asks this court to review whether the trial court abused its discretion by failing to order disclosure of all relevant peace officer personnel records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We have reviewed the relevant records and found no abuse of discretion. We therefore affirm.

BACKGROUND

A. The Prosecution Case

In January 2007, Los Angeles Police Department (LAPD) Officer Hector Diaz was assigned to a narcotics “buy” team. The team was working near Seventh and Main Streets in downtown Los Angeles, an area known by police to be active for narcotics sales and usage.

At approximately 7:30 p.m. on January 30, Officer Diaz approached defendant, who asked Officer Diaz, “What do you need?” Officer Diaz responded, “A twenty,” which was street vernacular for \$20 worth of narcotics. Defendant said, “My girl at the bar has fat ones.” According to Officer Diaz, the term “fat ones” referred to large pieces of rock cocaine.

Defendant and Officer Diaz went to a nearby bar called Crabby Joe’s. Defendant asked for money and Officer Diaz gave him a prerecorded \$20 bill—that is, a bill that previously had been photocopied and the serial number recorded by police. Defendant took the money to the bar, where he gave it to a woman later identified as Akilah Salaam.¹ Salaam put something in defendant’s right hand. Salaam told defendant not to give “it” to Officer Diaz in the bar because there were “cops outside.” Officer Anthony

¹ Salaam was a codefendant at trial, but is not a party to this appeal.

Jackson testified that he was outside the bar and could view Officer Diaz and defendant inside the bar.

Defendant and Officer Diaz left the bar and walked south on Main Street to Los Angeles Street. Defendant gave Officer Diaz a clear plastic bindle containing rock cocaine. After receiving the rock cocaine, Officer Diaz signaled other officers from the buy team, who arrested defendant. Salaam also was arrested, but the prerecorded \$20 bill was not recovered. Officer Jose Calderon also observed parts of the transaction and testified to his observations.

B. The Defense Case

Erin Zero testified that his parents owned Crabby Joe's and that he had worked there for a week before the crime. He testified that there was a telephone booth near the entrance of the bar. Defendant argued that the telephone booth obstructed the view of Officers Jackson and Calderon, who were outside the bar.

C. Procedural Background

Prior to trial, defendant moved for *Pitchess* discovery relating to ten LAPD officers. Defendant requested various disciplinary materials, including complaints against the officers for excessive force, fabrication of charges or evidence, and submission of false reports. The trial court granted the motion with respect to Officers Diaz, Jackson, Calderon and Huerta.² The trial court conducted an in camera review of certain personnel records of those officers, and ordered twenty items disclosed to defense counsel pursuant to a protective order.

The jury convicted defendant as charged. Defendant admitted five prior convictions. (Pen. Code, § 667.5, subd. (b).) The trial court struck four prior convictions pursuant to Penal Code section 1385 and sentenced defendant to state prison for five

² Officer Huerta did not testify at trial.

years, consisting of the mid term of four years for his substantive crime and one year for his prior prison term. The trial court imposed an \$800 restitution fine; an \$800 parole revocation restitution fine, stayed; a \$50 laboratory fine and a \$20 court security fee. The trial court gave defendant 486 days of presentence custody credit, consisting of 324 days of actual custody and 162 days of conduct credit. Defendant timely appealed.

DISCUSSION

The only issue on appeal is whether the trial court abused its discretion by failing to order disclosure of all relevant material pursuant to defendant's *Pitchess* motion. *Pitchess* motions are governed by the procedures "set forth in Evidence Code sections 1043 through 1047 and Penal Code sections 832.5, 832.7 and 832.8. When a defendant seeks discovery from a peace officer's personnel records, he or she must 'file a written motion with the appropriate court' (Evid. Code, § 1043, subd. (a)) and identify the proceeding, the party seeking disclosure, the peace officer, the governmental agency having custody of the records, and the time and place where the motion for disclosure will be heard (*id.*, subd. (b)(1)) [¶] If the trial court concludes the defendant has fulfilled [the] prerequisites and made a showing of good cause, the custodian of records should bring to court all documents 'potentially relevant' to the defendant's motion." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226; accord, *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 70-71; *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1018-1019.) The trial court examines these documents in camera, and "discloses only that information falling within the statutorily defined standards of relevance." (*Warrick v. Superior Court, supra*, 35 Cal.4th at p. 1019; accord, *People v. Prince* (2007) 40 Cal.4th 1179, 1285.) We review the trial court's decision to withhold *Pitchess* materials for abuse of discretion. (*People v. Mooc, supra*, 26 Cal.4th at p. 1228.)

We have reviewed the sealed transcripts of the trial court's in camera hearing and the *Pitchess* materials reviewed by the trial court. We conclude that the trial court

ordered disclosure of all potentially relevant material. There is nothing in the *Pitchess* materials that indicates an abuse of discretion by the trial court.

DISPOSITION

The judgment is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.